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SUBJECT: GOL VOWS THAT FRIVOLOUS LAWSUIT AND DEFUNCT SAUDI LOAN WILL NOT DERAIL MONROVIA PORT CONCESSION

REF A) MONROVIA 469; B) MONROVIA 135

¶1. SUMMARY: The Government of Liberia (GOL) has chosen to move forward with its search for a port management company to rehabilitate and oversee the Freeport of Monrovia. Saudi Arabia's withdrawal of a highly-concessional loan for port renovations (Ref A), and the recent revelation of an outstanding $44 million judgment (Ref B) against the port may constitute setbacks, but the Port Sector Reform Secretariat (PSRP) believes such disappointments need not translate into higher port fees or derail a concession process that has been a model of international best practices. The USG should continue to press the Saudis to renegotiate Liberia's outstanding debt, because the concessional loan remains the least expensive source of financing and would enable the GOL to renegotiate a concession on more favorable terms. END SUMMARY.

¶2. Econoffs met July 15 with Executive Director of the Port Sector Reform Secretariat Patrick Sendolo to discuss the concession process. On July 1, PSRP issued its long-awaited request for proposals for a 25-year contract to manage the Freeport of Monrovia (Ref B). Three internationally-recognized bidders, APMT, Bollore and ICTSI, passed a rigorous pre-screening process. Once bids are submitted in September, Sendolo will appoint an Inter-ministerial Concessions Committee, which will select a concessionaire based on pre-determined technical requirements, lowest cost service, and the most favorable profit-sharing. Sendolo expects the National Port Authority (NPA) to yield port management to the winning bidder in early 2010, and anticipates the concessionaire will need to invest at least $30 million in port renovations in the first three years.

¶3. Despite the PSRP's best efforts to run a methodical and transparent concession process, two unexpected hurdles appeared in the last month: a previously unknown $44 million judgment against the NPA, and the withdrawal of a promised $50 million loan from the Saudi Development Fund for port renovations. Sendolo articulated GOL's strategy to address these hurdles, and stressed his belief that the PSRP is not in danger.

What $44 million judgment?

¶4. Rumors of corruption and questionable legality plagued the Freeport of Monrovia management concession awarded to Global Security Seals (GSS) under the National Transitional Government of Liberia (NTGL) in August 2005. NTGL President Gyude Bryant cancelled the contract in December 2005, writing in a letter to GSS that "the justification for single-sourcing the contract was invalid and the contract is financially disadvantageous for Liberia." GSS pursued legal action against NPA claiming the contract was unjustly cancelled; a U.K. arbitration court awarded a $44.3 million settlement in May 2009 when the GOL failed to appear at a hearing in London. GOL expressed surprise at the outstanding settlement and maintained they had no knowledge of the suit until notified by the Embassy on July 2 after DLA Piper, the firm representing the plaintiff, contacted AF/W. (Note: Sendolo believes the fact that DLA Piper contacted the State Department the day after the release of the RFP is no coincidence. "They understand they have a weak case and the odds of enforcing it are next to nil," so they

attempted to influence the port through sabotage of the concessions process. However, Sendolo's cynicism may be unwarranted as the damages had only been awarded on May 7. End Note.)

¶5. Sendolo, a U.S.-trained attorney, said he had reviewed the arbitration documents, and was "not losing sleep"' over the matter. Citing the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the so-called New York Convention) he questioned the award's legitimacy and enforceability for two reasons. First, DLA Piper failed to begin enforcement proceedings in Liberia, as required by the convention. Second, the convention does not recognize the validity of contracts that are deemed contrary to local law, as Liberia's Public Procurement Concessions Commission determined the SSG contract to be.

¶6. Sendolo believes all three would-be concessionaires already are aware of the outstanding lawsuit, but does not worry that it will detract from their interest in the management contract. In fact, to ease the concerns of the prospective concessionaires, Sendolo suggested the NPA offer a letter indemnifying them against any settlement. However, Vishal Gujadhur, advisor to Minister of Finance Augustine Ngafuan, said the MOF opposes such a letter on the grounds that it constitutes a contingent liability that could conflict with Liberia's commitment to zero borrowing under the terms of its Poverty Reduction and Growth Facility.

¶7. The President has tapped Commissioner of the Bureau of Maritime Affairs, Binyah Kesselly, to oversee the GOL's resolution of the lawsuit and mediate between the MOF and the NPA. The GOL also will retain DC-based Hogan & Hartson as its legal counsel, according to Gujadhur.

Moving Ahead Without Saudi Financing

¶8. Although Sendolo expressed disappointment in the withdrawal of the Saudi Development Fund's $50 million concessional loan for port renovations, he said the dilapidated Freeport could no longer wait for funding that might never materialize (Ref A). He believes the MOF's concern that high-quality concessionaires would lose interest if they were expected to renovate the port themselves appear unfounded; the three pre-qualifed companies continue to show interest and are all well respected internationally. Additionally, Sendolo said concerns that the would-be concessionaire would be forced to increase port fees to recoup the large upfront investment may be overstated. The Freeport of Monrovia imposes the lowest port fees in West Africa. Even if the port management company passes these construction costs directly to the consumer, he estimates that costs per container will rise from $100 to $175, well below the regional average of $300. He insisted the impact on the consumer would be negligible, translating into less than a 20" (twenty U.S. cents) increase per bag of rice. And if an efficient concessionaire reduces the costs associated with the time goods currently languish in port, then the effect on the local price level may in fact be positive for consumers.

¶9. If the Saudi loan does materialize during the concessions process, Sendolo is confident the PSRP could renegotiate the concession. Given that the highly concessional loan would constitute cheaper credit than any financing a private company could attract, he suspects the contract could be renegotiated on terms that would be appealing to both the GOL and the concessionaire.

¶10. COMMENT: To its credit, the GOL has buffered itself against these potential setbacks by pursuing a methodical and transparent concessions process that attracted only credible port management companies (Ref B). The stringency of the process ensured only high-caliber companies with a track record in the region would be interested. As a result, the three finalists likely knew of the lawsuit; however, the $44 million settlement will continue to loom overhead despite GOL's insistence of its frivolous nature. GOL's claim that the lawsuit was a surprise appears more a symptom of

internal disorder than deliberate concealment. Without the Saudi loan, concessionaires will most likely be forced to increase port fees, which could decrease port volume or lead to higher prices for consumers. Although the Freeport of Monrovia offers the lowest regional fees, the quality of service is also the lowest. An increase in port fees must be coupled with an increase in services to avoid a negative economic impact.

THOMAS- GREENFIELD